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6 In Pro Per

FILED
ASHEVILLE, N.C.

MAY -5 2009

U.S. DISTRICT COURT
W. DIST. OF N.C.

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
10 **ASHEVILLE DIVISION**

11 **1:08cv230**

12
13 UNITED STATES OF AMERICA)

14 Plaintiff,)

15 Vs.)

16 3039.375 POUNDS OF COPPER)
17 COINS, ET AL.,)

18 Defendants,)

19 Zeke Layman,)

20 Claimant)
21

**OBJECTION TO MEMORANDUM AND
RECOMMENDATION**

22 **NOW COMES Zeke Layman**, and OBJECTS to Magistrate Dennis L. Howell's
23 Memorandum and Recommendation that Zeke Layman's Motion to Dismiss "be summarily
24 denied for lack of standing....", on the ground that Zeke Layman is a claimant in this case.

25 Zeke Layman has standing in this case as shown by his "Claim by Zeke Layman" filed
26 April 27, 2009 as document 45.

27 Further, Zeke Layman OBJECTS to the Magistrate's Recommendation that "a system of
28 pre-filing review be imposed on Mr. Layman", because he has not filed any frivolous papers or

1 has shown any vexatious conduct that would support such an injunction upon him.

2 A brief review of Magistrate Howell's order of 4/22/2009, document 43, shows that "Mr.
3 Layman was cautioned that by continuing to file ex parte pleadings, he is disobeying the
4 instructions of this court and that further disobedience may result in the imposition of
5 sanctions,...."

6 Mr Layman took this "caution" to heart as well as the advice to follow Rule G(5)(a), and
7 Rule G(5)(b), and he followed these directions by filing his "Claim by Zeke Layman" under Rule
8 G(5)(a)(i), and the "Motion to Dismiss" under Rule G(5)(b), both on 4/27/2009. Mr. Layman
9 has not and does not intend to make any frivolous filings or do anything that would hinder the
10 court from fulfilling its constitutional duty.

11
12 **WHEREFORE**, claimant Zeke Layman, respectfully request that this Court REJECT the
13 Memorandum and Recommendation of Magistrate Dennis L. Howell and find that Zeke Layman
14 DOES have the standing to make the Motion to Dismiss under Rule 12 b; hear and GRANT the
15 Motion to Dismiss on the grounds that the Plaintiff has failed to state a claim upon which the
16 court can grant relief, and order the property returned.

17
18 Date: May 4, 2009

Respectfully Submitted,

19
20 Zeke Layman
Zeke Layman In Pro Per

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he is over the age of 18 years and not a party to the within entitled cause of action; and

That on May 4, 2009 he did serve a copy of the attached **OBJECTION TO MEMORANDUM AND RECOMMENDATION** by placing said copy in a post paid envelope addressed to the person(s) hereafter named, at the place(s) and address(es) stated below, which is the last known address(es), and by depositing said envelope and contents in the United States Mail at Chico, California.

a total of 3 pages delivered to the address as follows:

THOMAS R. ASCIK
ASSISTANT UNITED STATES ATTORNEY
100 Otis Street
Asheville, North Carolina 28801

John Robert Seymour
Baucom Claytor Benton Morgan & Wood
P.O. Box 35246
Charlotte, NC 28235

Further, I declare under penalty of perjury that the foregoing is true and correct and that these documents were executed and mailed as above described within California on May 4, 2009.

Dated: 5 / 4 / 2009

Ruth Koff
Decarant

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